UNITED NATIONS

HRI

International Human Rights Instruments

Distr.
GENERAL

HRI/CORE/1/Add.5/Rev.2
23 June 1997

Original: ENGLISH

CORE DOCUMENT FORMING PART OF THE REPORTS OF STATES PARTIES

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[24 February 1997]

CONTENTS

		Paragraphs	Page
I.	LAND AND PEOPLE	1	2
II.	GENERAL POLITICAL STRUCTURE	2 - 117	2
	A. System of government	2 - 42	2
	B. The law	43 - 117	11
III.	GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED	118 - 182	26
	A. Authorities having jurisdiction affecting human rights	118	26
	B. Remedies, compensation and rehabilitation	119 - 140	26
	C. Constitutional protection of human rights	141	29
	D. Incorporation of human rights instruments into national legislation	142	30
	E. Enforcement by courts of human rights instruments	143	30
	F. National machinery for implementation of human rights	144 - 182	30
IV.	INFORMATION AND PUBLICITY	183 - 184	38

GE.97-17067 (E)

I. LAND AND PEOPLE

1. Background statistical information on the United Kingdom, using the most up-to-date figures available, is as follows:

Per capita income (based on GNP per head)	£10,462 (1995, provisional)
Gross national product	At market prices £664,750 million 1/ At factor cost £577,570 (1995) 1/
Rate of inflation	2.2 per cent (May 1995-May 1996)
External debt	£323 billion (1995/1996)
Rate of unemployment	Total 7.1 per cent) Males 9.5 per cent) October 1996 Females 3.9 per cent)
Life expectancy	Males 74.0 years) Females 79.3 years) 1996
Infant mortality rate	6.2 per 1,000 live births (1994)
Maternal mortality rate	7.9 per 100,000 births (1994)
Fertility rate	1.74 (1994)
Percentage of population under 15	Males 20.4 per cent) Females 18.6 per cent) mid-1994
Percentage of population over 65	Males 12.1 per cent) Females 17.4 per cent) mid-1994
Percentage of population in rural areas and in urban areas	Rural 10.4 per cent Urban 89.6 per cent (data from 1991 census for Great Britain)
Percentage of households headed by women	27 per cent (1994 General Household Survey)

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. The system of parliamentary government in the United Kingdom is not based on a written constitution, but is the result of a gradual evolution spanning several centuries. The essence of the system today, as it has been for more than two centuries, is that the political leaders of the executive

---

1/ Based on definition used for OECD. (Different figures are used for domestic purposes.)

are members of the legislature and are accountable to an elected assembly, the House of Commons, comprising members from constituencies in England, Scotland, Wales and Northern Ireland. The Government's tenure of office depends on the support of a majority in the House of Commons, where it has to meet informed and public criticism by an Opposition capable of succeeding it as a Government, should the electorate so decide.

The powers of Parliament

3. Parliament is the supreme legislative authority in the United Kingdom. Its three elements - the Queen and the two houses of Parliament (the House of Lords and the elected House of Commons) - are outwardly separate. They are constituted on different principles and they meet together only on occasions of symbolic significance such as a coronation, or the State opening of Parliament when the Commons are summoned by the Queen to the House of Lords. As a law-making organ of State, however, Parliament is a corporate body and with certain exceptions (see below) cannot legislate without the concurrence of all its parts.

4. Parliament can legislate for the United Kingdom as a whole, for any of the constituent parts of the country separately, or for any combination of them. It can also legislate for the Channel Islands and the Isle of Man, which are Crown dependencies and not part of Britain, having subordinate legislatures which legislate on island affairs. The legislatures of the Channel Islands (the States of Jersey and the States of Guernsey) and the Isle of Man (the Tynwald Court) consist of the Queen, the Privy Council and the local assemblies. It is the duty of the Home Secretary, as the member of the Privy Council primarily concerned with island affairs, to scrutinize each legislative measure before it is submitted to the Queen in Council.

5. The Parliament Act 1911 fixed the maximum life of a Parliament at five years, although a Parliament may be dissolved and a general election held before the expiry of the full term. Because it is not subject to the type of legal restraints imposed on the legislatures of countries with formal written constitutions, Parliament is virtually free to legislate as it pleases: generally to make, unmake, or alter any law; to legalize past illegalities and to make void and punishable what was lawful when done and thus reverse the decisions of the ordinary courts; and to overturn established conventions or turn a convention into binding law.

6. In practice, however, Parliament does not assert its supremacy in this way. Its members bear in mind the common law, which has grown up over the centuries, and have tended to act in accordance with precedent and tradition. Moreover, both houses are sensitive to public opinion, and, although the validity of an Act of Parliament that has been duly passed, legally promulgated and published by the proper authority cannot be disputed in the law courts, no Parliament would be likely to pass an Act which it knew would receive no public support. The system of party government in the United Kingdom helps to ensure that Parliament legislates with its responsibility to the electorate in mind.

The Crown and Parliament

7. Constitutionally the legal existence of Parliament depends upon the exercise of the royal prerogative (broadly speaking, the collection of residual powers left in the hands of the Crown). However, the powers of the Crown in connection with Parliament are subject to limitation and change by legislative process and are always exercised through and on the advice of ministers responsible to Parliament.

8. As the temporal "governor" of the established Church of England, the Queen, on the advice of the Prime Minister, appoints the archbishops and bishops, some of whom, as "Lords Spiritual", form part of the House of Lords. As the "fountain of honour", she confers peerages (on the recommendation of the Prime Minister who usually seeks the views of others); thus the "Lords Temporal", who form the remainder of the upper House, have likewise been created by royal prerogative and their numbers may be increased at any time.

9. Parliament is summoned by royal proclamation, and is prorogued (discontinued until the next session) and dissolved by the Queen. At the beginning of each new session the Queen drives in state to the House of Lords and opens Parliament in person. (In special circumstances, this may be done by royal commissioners acting on her behalf.) At the opening ceremony the Queen addresses the assembled Lords and Commons; the Queen's speech is drafted by her ministers and outlines the Government's broad policies and proposed legislative programme for the session.

10. The Sovereign's assent is required before any legislation can take effect: Royal Assent to bills is now usually declared to Parliament by the speakers of the two houses. The Sovereign has the right to be consulted, the right to encourage and the right to warn, but the right to veto legislation has long since fallen into disuse.

Parliamentary sessions

11. The life of a Parliament is divided into sessions. Each session usually lasts for one year and is usually terminated by prorogation, although it may be terminated by dissolution. During a session either house may adjourn itself, on its own motion, to whichever date it pleases.

12. Prorogation at the close of a session is usually effected by an announcement on behalf of the Queen made in the House of Lords to both houses, and operates until a fixed date. The date appointed may be deferred or brought forward by subsequent proclamation. The effect of a prorogation is at once to terminate nearly all parliamentary business. This means that all public bills not completed in the session lapse, and have to be reintroduced in the next session unless they are to be abandoned.

13. Parliament is usually dissolved by proclamation either at the end of its five-year term or when a government requests a dissolution before the terminal date. In modern practice, the unbroken continuity of Parliament is assured by the fact that the same proclamation which dissolves the existing Parliament orders the issue of writs for the election of a new one and announces the date

on which the new Parliament is to meet. Should the Sovereign die after a dissolution but before the general election, the election and the meeting of the new Parliament would be postponed for 14 days.

14. An adjournment does not affect uncompleted business. The reassembly of Parliament can be accelerated (if the adjournment was intended to last for more than 14 days) by royal proclamation, or at short notice, if the public interest demands it, by powers specially conferred by each house on its speaker.

Northern Ireland

15. Between 1921 and 1972 Northern Ireland had its own Parliament and government, subordinate to the Parliament at Westminster. In 1972, following several years of sectarian violence and terrorism, the Northern Ireland government resigned and direct rule by the United Kingdom Parliament was introduced with executive powers under the control of a Secretary of State for Northern Ireland, a cabinet minister who was given responsibility for functions previously exercised by the Northern Ireland government, and responsibility for the Northern Ireland departments. In order to maintain a coherent body of Northern Ireland legislation that can be returned to a future local legislature, the Government usually amends or augments existing legislation for Northern Ireland using the Order in Council procedure. This is subject to less scrutiny than a bill, and there is therefore special provision for consultation on legislative proposals, including debates in the Northern Ireland Grand Committee. Westminster bills may also be used where that is practical and appropriate.

The European Community

16. Since the United Kingdom acceded to the European Community in 1973 the provisions of the European Communities Act 1972 applying the Treaty of Rome have come into force. These provide for various types of community legislation, including regulations which are legally binding and directly applicable in all member countries and directives also made by the Community (whose Council of Ministers comprises representatives of the Government of each member State). These directives are binding as regards the result to be achieved upon each member State to which they are addressed, but allow the national Parliaments to choose the form and method of implementation. Special parliamentary procedures have been adopted to keep members of both houses of the British Parliament informed about developments within the European Community and, more recently, about developments under the two other "pillars" of the European Union (foreign and security policy, and interior and justice policies), following the United Kingdom's accession to the Maastricht Treaty in 1993.

17. The United Kingdom, like the other member countries of the Community, sends a number of representatives to sit in the European Parliament. The Parliament exercises control over community institutions by scrutinizing legislation, by questioning both the Commission and the Council of Ministers and by debating all major policy issues of the Community.

The composition of Parliament

18. The two-chamber system is an integral part of British parliamentary government. The House of Lords (the upper house) and the House of Commons (the lower house) sit separately and are constituted on entirely different principles. The process of legislation involves both houses.

19. Since the beginning of Parliament, the balance of power between the two houses has undergone a complete change. The continuous process of development and adaptation has been greatly accelerated during the past 75 years or so. In modern practice the centre of parliamentary power is in the popularly elected House of Commons, but until the twentieth century the Lords' power of veto over measures proposed by the Commons was, theoretically, unlimited. Under the Parliament Acts 1911 and 1949 certain bills may become law without the consent of the Lords. The 1911 Act imposed restrictions on the Lords' right to delay bills dealing exclusively with expenditure or taxation and limited their power to reject other legislation. Under the 1911 Act the Lords were limited to delaying bills for two years. This was reduced to one year by the 1949 Act.

20. These limitations to the powers of the House of Lords are based on the belief that the principal legislative function of the modern House of Lords is revision, and that its object is to complement the House of Commons, not to rival it.

House of Lords

21. The House of Lords consists of:

(a) The Lords Spiritual: the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and the 21 next most senior diocesan bishops of the Church of England;

(b) The Lords Temporal, subdivided into (i) all hereditary peers and peeresses of England, Scotland, Great Britain and the United Kingdom who have not disclaimed their peerage under the Peerage Act 1963; (ii) all life peers and peeresses created by the Crown under the Life Peerages Act 1958; and (iii) Lords of Appeal ("law lords"), created life peers under the Appellate Jurisdiction Acts 1876 and 1887 to assist the House in its judicial duties. Some law lords may already be members of the House and all remain so after their retirement.

22. Hereditary peerages carry a right to sit in the House of Lords (subject to certain statutory disqualifications), provided the holder establishes his or her claim and is 21 years of age or over, but anyone succeeding to a peerage may, within 12 months of succession, disclaim that peerage for his or her lifetime under the Peerage Act. Disclaimants lose their right to sit in the House of Lords but gain the right to vote at parliamentary elections, and to offer themselves for election to the House of Commons.

23. Temporal peerages (both hereditary and life) are conferred by the Sovereign, on the advice of the Prime Minister. They are usually granted

either in recognition of distinguished service in politics or other walks of life or because the Government of the day wishes tc have the recipient in the upper House. The House of Lords also provides a place in Parliament for men and women whose advice is useful to the State, but who do not wish to be involved in party politics. Unlike the House of Commons, there is no fixed number of members in the House of Lords. Relatively few are full-time politicians. The opportunity is often taken to appoint as life peers or peeresses former members of the Government who can usefully fulfil that role in the House of Lords. In relation to Scotland also in recent years Ministers of the Crown have been appointed from members of the House of Lords who have been appointed as Life Peers specifically for this purpose such as the Lord Advocate.

Final Court of Appeal

24. In addition to its parliamentary work, the House of Lords has important legal functions, being the final court of appeal for civil cases in the whole of the United Kingdom, and for criminal cases in England, Wales and Northern Ireland. Theoretically, all Lords are entitled to attend the House when it is sitting as a court of appeal, but in practice and by established tradition, judicial business is conducted by the Lord Chancellor, who sits from time to time, the Lords of Appeal in Ordinary (who are expressly appointed to hear appeals to the House, and are salaried), and - when required - other Lords who hold or have held high judicial office. Traditionally the Lords of Appeal in Ordinary include amongst their numbers at least two who are Scottish judges. It is customary for these judges to lead in Scottish cases although this is not invariably the situation.

House of Commons

25. The House of Commons is a representative assembly elected by universal adult suffrage, and consists of men and women (members of Parliament, "MPs") from all sections of the community, regardless of income or occupation. There are 651 seats in the House of Commons: 524 for England, 38 for Wales, 72 for Scotland and 17 for Northern Ireland. Orders passed in 1995 as a result of Boundary Commission reviews will increase the number of seats in England to 529, in Wales to 40 and in Northern Ireland to 18 with effect from the next general election, making a total of 659 seats.

26. Members of the House of Commons hold their seats during the life of a Parliament. They are elected either at a general election, which takes place after a Parliament has been dissolved and a new one summoned by the Sovereign, or at a by-election, which is held when a vacancy occurs in the House as a result of the death or resignation of an MP or as a result of elevation of a member to the House of Lords.

Parliamentary elections

27. For electoral purposes, the United Kingdom is divided into geographical areas known as constituencies, each returning one member to the House of Commons. To ensure equitable representation, Boundary Commissions for England, Scotland, Wales and Northern Ireland make periodic reviews of parliamentary and European Parliament constituencies at intervals of not less

than 8 and not more than 12 years, and recommend any redistribution of seats that may seem necessary in the light of population movement or other changes. A commission may also submit interim reports on particular constituencies if, for instance, it is necessary to bring constituency boundaries into line with altered local government boundaries.

28. The law relating to parliamentary elections is contained in the Representation of the People Acts. Under their provisions election to the House of Commons is decided by secret ballot. British citizens, citizens of other Commonwealth countries and citizens of the Irish Republic resident in the United Kingdom are entitled to vote provided they are aged 18 years or over and not legally disqualified from voting. The following people are not entitled to vote in a parliamentary election: peers and peeresses in their own right, who are members of the House of Lords; non-British, Commonwealth or Irish citizens; patients detained under mental health legislation; convicted offenders detained in custody; and anyone convicted within the previous five years of corrupt or illegal election practices. To be eligible to vote in a particular constituency an elector must be registered in the current electoral register for that constituency. The electoral register is compiled annually by electoral registration offices in each constituency.

29. Voting is not compulsory, but at a general election the majority of the electorate (over 33.6 million people or 77.7 per cent at the general election in April 1992) exercise their right. At by-elections polling percentages may be substantially lower. As a general rule, electors vote in person at polling stations specially established for the purpose.

30. Any man or woman who is a British citizen, a citizen of another Commonwealth country or a citizen of the Irish Republic, who is not disqualified from voting and has reached the age of 21, may stand as a candidate at a parliamentary election. Those disqualified from election include undischarged bankrupts, people sentenced to more than one year's imprisonment, members of the House of Lords, clergy of the Churches of England, Scotland and Ireland and the Roman Catholic Church, and those precluded under the House of Commons Disqualification Act 1975 - for instance, holders of judicial office, civil servants, members of the regular armed forces or the police service, or British members of the legislature of any country or territory outside the Commonwealth. Also precluded are holders of a wide range of public posts - for instance, in public corporations and government commissions. A candidate usually belongs to one of the main national political parties, although smaller parties or groupings also nominate candidates, and individuals may be nominated without party support. A candidate's nomination for election must be signed by two electors as proposer and seconder, and by eight other electors registered in the constituency.

31. The system of voting used is the simple majority system: candidates are elected if they have a majority of votes over the next candidate, although not necessarily a majority over the sum of the other candidates' votes.

32. Questions concerning changes in electoral law have in the past been considered periodically at a Speaker's Conference, consisting of MPs meeting

under the chairmanship of the Speaker. As with other parliamentary committees, the party composition of the Conference reflects that of the House. The proceedings are in private and recommendations are published in the form of letters from the Speaker to the Prime Minister. Nowadays changes in electoral law are normally considered by Select Committee.

The party system

33. The existence in the United Kingdom of organized political parties, each laying its own policies before the electorate, has led to well-developed political groupings in Parliament, which are considered to be vital to democratic government. The party system has existed in one form or another since the eighteenth century, and began to assume its modern shape towards the end of the nineteenth century. Whenever there is a general election (or a by-election) the parties may put up candidates for election; any other citizen who wishes may also stand. The electorate then indicates, by its choice of candidate at the polls on election day, which of the opposing policies it would like to see put into effect. The candidate who polls the most votes is elected; an absolute majority is not required.

34. Since 1945 eight general elections have been won by the Conservative Party and six by the Labour Party, and the great majority of members of the House of Commons have represented either one or other of these two parties. In the general election of April 1992 all 651 constituencies in Britain were contested. In England, Wales and Scotland the Labour Party and the Conservative Party contested all the 634 seats. The Liberal Democrat Party contested 632 seats; the Scottish National Party contested all 72 Scottish seats, while Plaid Cymru (Welsh Nationalists) contested all 38 constituencies in Wales.

Government and Opposition

35. The leader of the party which wins the most seats (but not necessarily the most votes) at a general election, or which has the support of a majority of members in the House of Commons, is by constitutional convention invited by the Sovereign to form a government and is appointed Prime Minister. On occasions when no party succeeds in winning an overall majority of seats, a minority government may be formed.

36. The Prime Minister chooses a team of ministers, including a Cabinet of about 20 members, whom he recommends to the Sovereign for appointment as Ministers of the Crown. Together they form Her Majesty's Government.

37. The party with the next largest number of seats is officially recognized as "Her Majesty's Opposition" (or "the Official Opposition"), with its own leader and its own "shadow cabinet", whose members act as spokesmen on the subjects for which government ministers have responsibility. Members of any other parties and any independent MPs who have been elected support or oppose the Government according to their own party or their own views.

38. The Government has the major share in controlling and arranging the business of the two houses. As the initiator of policy, it indicates which

action it wishes Parliament to take, and explains and defends its position in public debate. Unlike Governments of the past, which were frequently obliged by members of their own party to withdraw measures, most present-day Governments can usually count on the voting strength of their supporters in the House of Commons and, depending on the size of their overall majority, can thus secure the passage of their legislation in substantially the form that they originally proposed. This development, which is the result of the growth of party discipline, has strengthened the hand of the Government, but it has also increased the importance of the Opposition. The greater part of the work of exerting pressure through criticism now falls on the opposition, which is expected and given the opportunity, according to the practice of both houses, to develop its own position in Parliament and state its own views.

Parliamentary control of the executive

39. Control of the Government is exercised finally by the ability of the House of Commons to force the Government to resign, by passing a resolution of "no confidence" or by rejecting a proposal which the Government considers so vital to its policy that it has made it a matter of confidence, or ultimately by refusing to vote the money required for the public service.

40. As a representative of the ordinary citizen, an MP may challenge the policy put forward by a minister (i) during a debate on a particular bill, when he or she may object to its broad principles in the second reading or, as regularly happens, may put forward amendments at committee stage, (ii) through the institution of parliamentary questions and answers, (iii) during adjournment debates or (iv) during the debates, on "Opposition days". In addition, the expenditure, administration and policy of the principal government departments is closely scrutinized by the select committees of the House of Commons.

Question Time

41. Question Time in the House of Commons, in its modern usage, is largely a development of the twentieth century. Until well into the nineteenth century members of Parliament had almost unlimited opportunities to speak to the House in the ordinary course of events. Nowadays, when parliamentary time is devoted mainly to public business, questions are regarded as the best means of eliciting information (to which members might not otherwise have access) about the Government's intentions, as well as the most effective way of airing, and possibly securing some redress of, grievances brought to the notice of MPs by their constituents. From time to time questions may be used as part of an organized group campaign to bring about a change in government policy, and there may be "inspired" questions, when a member is asked to put down a question so that the minister responsible can make a public statement.

42. The conventions governing admissible questions have been derived mainly from decisions taken over a long period by successive speakers in relation to individual questions, although practice and procedure of Question Time is also reviewed from time to time by the House of Commons Select Committee on procedure.

B. The law

Administration

43. The judiciary in the jurisdictions of the United Kingdom (that is to say England and Wales, Scotland and Northern Ireland) is independent of the Government in its judicial functions, which are not subject to ministerial direction or control. The most senior judicial appointments are made by the Queen on the recommendation of the Prime Minister. Some other judicial appointments are made by the Queen on the recommendation of the Lord Chancellor in respect of England, Wales and Northern Ireland, and on the recommendation of the Secretary of State for Scotland (with the advice of the Lord Advocate) in Scotland. A wide range of full-time and part-time appointments in England, Wales and Northern Ireland are made personally by the Lord Chancellor; this includes some judicial office-holders whose jurisdiction extends also to Scotland.

England and Wales

44. The Lord Chancellor is the head of the judiciary in England and Wales (and sometimes sits as a judge in the House of Lords). Within government the Lord Chancellor is the minister with overall responsibility for the work of the English and Welsh courts and certain administrative tribunals. However, all operational aspects of the higher courts are the responsibility of the Chief Executive of the Court Service. The magistrates' courts in England and Wales are a separate service locally administered under the direction of magistrates' courts committees, but the Lord Chancellor has a number of important statutory responsibilities in respect of them. These include funding for the courts, making regulations for the constitution and procedure of magistrates' courts committees, approving the appointment of justices' clerks, and receiving fine and fee income. He appoints magistrates, and has ministerial responsibility for the legal aid and advice schemes in England and Wales. He is also responsible for the administration of civil law reform in those countries.

45. There are about 1,100 full-time judges and judicial officers in England and Wales. In addition to these full-time judges and judicial officers, there are about 1,250 recorders and assistant recorders. These are practising lawyers sitting on a part-time basis, about a month a year each, in the Crown Court and county courts. Some senior advocates also sit from time to time as Deputy High Court Judges, and other lawyers sit part-time in the county court as Deputy District Judges. There are also some 30,000 lay Justices of the Peace who sit in magistrates' courts up and down the country. These are ordinary citizens who give up some of their time to administer local justice (they receive no remuneration for this). They usually sit in courts of three with a legally qualified clerk to advise them on points of law. Thus, a notable feature of the administration of justice in this country is that a small number of professional judges are supplemented by a large number of lay judges who dispose of the vast majority of minor criminal trials.

46. It is a cardinal principle that, in the exercise of their judicial function, all judges are completely independent. This means that the political and judicial worlds must be kept at arm's length from each other.

It is inevitable and proper that the law, and the operation of the law in the courts, should be scrutinized by Parliament and the executive. However, it is a generally accepted convention that members of Parliament and politicians should not criticize particular judicial decisions, albeit that Parliament has the power to reverse their general effects by legislation. When the Lord Chancellor receives letters from members of Parliament, complaining about judicial decisions on behalf of members of the public, he always makes it clear in reply that his constitutional position prohibits him, like any other minister, from intervening in such matters. If Parliament and the executive are not to interfere in the judicial sphere, so conversely the judges are expected to distance themselves from politics. Full-time judges are disqualified from being members of the House of Commons, and Lords of Appeal in Ordinary and other senior judges who are members of the House of Lords do not usually take part in its proceedings except when they relate to legal matters.

47. The Home Secretary is concerned with the criminal law, the police service, prisons, and the probation and after-care service in England, Wales and Northern Ireland. Prison policy and the administration of custodial centres are functions of Her Majesty's Prison Service, which is an executive agency of the Home Office. The Home Secretary appoints to each prison establishment a board of visitors representing the local community who need to satisfy themselves as to the state of prison premises, administration and treatment of inmates. They are required to report to the Home Secretary any abuse or matters of concern which come to their attention. Prisons are subject to inspection by Her Majesty's Chief Inspector of Prisons who is appointed by the Home Secretary to whom he reports directly. All reports, including those which are critical, are taken very seriously by both ministers and the Prison Service. The Home Secretary also appoints the Prisons Ombudsman. The Ombudsman's role is to investigate individual complaints from prisoners and to make any recommendations that appear necessary as a result of those investigations. The Ombudsman also reports directly to the Home Secretary. The Home Secretary is advised by a special Parole Board on the release of prisoners on licence.

48. Responsibility for the treatment of offenders under 18 is shared between the Home Office and the Department of Health.

49. The Home Secretary is also responsible for advising the Queen on whether there are exceptional grounds for exercising the royal prerogative of mercy such as, in the absence of a court-based remedy, to pardon a person convicted of an offence or to remit all or part of a penalty imposed by a court. The Home Secretary's responsibilities regarding the Royal Prerogative extend to England and Wales. The Secretaries of State for Scotland and Northern Ireland have similar responsibilities.

50. The Attorney General and the Solicitor General are the Government's principal advisers on English law, and represent the Crown in appropriate domestic and international cases. They are senior barristers, elected members of the House of Commons and hold ministerial posts. The Attorney General is also Attorney General for Northern Ireland. As well as exercising various civil law functions, the Attorney General has final responsibility for enforcing the criminal law· the Director of Public Prosecutions is subject to

the Attorney General's superintendence. The Attorney General is concerned with instituting and prosecuting certain types of criminal proceedings, but must exercise an independent discretion and must not be influenced by government colleagues. The Solicitor General is, in effect, the deputy of the Attorney General.

Scotland

51. The Scottish legal system is separate from that of the rest of the United Kingdom. The Secretary of State for Scotland deals with court procedure in Scotland and recommends the appointment of all judges in Scotland other than the most senior ones, appoints the staff of the High Court of Justiciary and the Court of Session, and is responsible for the composition, staffing and organization of the sheriff courts. District courts are staffed and administered by local authorities. The Secretary of State is also responsible for the criminal law of Scotland, crime prevention, and the police and the penal system, and is advised on parole matters by the Parole Board for Scotland. He is responsible for legal aid in Scotland. The duties of the administration of the courts including the duties of allocating business to sheriffs and ensuring that business is carried out expeditiously are placed directly on the senior judiciary, who in Scotland are the Lord President of the Court of Session (who is also the Lord Justice General of Scotland) and the Sheriffs Principal of the Sheriffdoms of which there are six.

52. The Lord Advocate and the Solicitor General for Scotland are the chief legal advisers to the Government on Scottish questions and the principal representatives of the Crown for the purposes of litigation in Scotland. Both are government ministers. The Lord Advocate is closely concerned with questions of legal policy and administration and is also responsible for the Scottish parliamentary draftsmen. He has overall responsibility for the prosecution of crime in Scotland and, although he holds a ministerial post, must exercise an independent discretion in carrying out this responsibility.

Northern Ireland

53. The administration of all courts in Northern Ireland is the responsibility of the Lord Chancellor, while the Northern Ireland Office, under the Secretary of State, deals with the police and the penal system. The Lord Chancellor also has general responsibility for the legal aid and advice scheme in Northern Ireland.

The criminal law

54. In England and Wales the initial decision to begin criminal proceedings normally lies with the police. Once the police have brought a criminal charge, the papers are passed to the Crown Prosecution Service which decides whether the case should be accepted for prosecution in the courts or whether the proceedings should be discontinued. In Scotland public prosecutors (procurators fiscal) decide whether or not to initiate proceedings. In Northern Ireland there is a Director of Public Prosecutions. In England and Wales (and exceptionally in Scotland) a private person may institute criminal

proceedings. Police may issue cautions, and in Scotland the procurator fiscal has a number of alternatives to prosecution, including warnings and referrals to the Social Services Department.

55. In April 1988 the Serious Fraud Office, a government department, was established to investigate and prosecute the most serious and complex cases of fraud in England, Wales and Northern Ireland. A similar unit, the Crown Office Fraud and Specialist Services Unit, investigates such cases in Scotland.

England and Wales

56. The Crown Prosecution Service was established in England and Wales by the Prosecution of Offences Act 1985. The Director of Public Prosecutions is the head of the Service, which is responsible for the prosecution of most criminal offences in magistrates' courts and the Crown Court. The Service is divided into 13 regional areas and one non-geographical area, which is known as Central Casework and is based in London and York. Each area is headed by a Chief Crown Prosecutor appointed by the Director of Public Prosecutions. The Service provides lawyers to prosecute cases in the magistrates' courts and briefs barristers to appear in the Crown Court. Although most cases are dealt with in the regional area where they arise, some cases are dealt with by Central Casework: these include cases of national importance, exceptional difficulty or great public concern and those which require that suggestions of local influence be avoided. Such cases might include terrorist offences, breaches of the Official Secrets Acts, corruption cases and some prosecutions of police officers.

Scotland

57. Discharging his duties through the Crown Office and the Procurator Fiscal Service, the Lord Advocate is responsible for all prosecutions in the High Court of Justiciary, sheriff courts and district courts. There is no general right of private prosecution; with a few minor exceptions crimes and offences may be prosecuted only by the Lord Advocate or his deputes or by the procurators fiscal, who are the Lord Advocate's local representatives. The permanent adviser to the Lord Advocate on prosecution matters is the Crown Agent, who is head of the Procurator Fiscal Service and is assisted in the Crown Office by a staff of legally qualified civil servants, all of whom have had experience as deputy procurators fiscal. Prosecutions in the High Court are prepared by procurators fiscal and Crown Office officials and prosecuted by the Lord Advocate, the Solicitor-General for Scotland (the Lord Advocate's ministerial deputy) and advocates deputy who are collectively known as Crown Counsel. Crimes tried before the local sheriff and district courts are prepared and prosecuted by procurators fiscal who decide whether or not it is in the public interest to prosecute, subject to the directions of the Lord Advocate.

58. Under the Criminal Procedure (Scotland) Act 1995 a procurator fiscal may make a conditional offer of a fixed penalty to an alleged offender in respect of certain minor offences as an alternative to prosecution: the offender is not obliged to accept an offer but if he or she does so the prosecution loses the right to prosecute.

Northern Ireland

59. The Director of Public Prosecutions for Northern Ireland, who is responsible to the Attorney General, prosecutes all offences tried on indictment, and may do so in summary cases of a serious nature. Other summary offences are prosecuted by the police.

The criminal courts

England and Wales

60. Criminal offences may be grouped into three categories. Offences triable only on indictment - the very serious offences such as murder, manslaughter, rape and robbery - are tried only by the Crown Court presided over by a judge sitting with a jury. Summary offences - the least serious offences and the vast majority of criminal cases - are tried by unpaid lay magistrates sitting without a jury. A third category of offences (such as theft, burglary or malicious woundings) are known as "either way" offences and can be tried either by magistrates or by the Crown Court depending on the circumstances of each case and the wishes of the defendant.

61. In addition to dealing with summary offences and the "either way" offences which are entrusted to them, the magistrates' courts commit cases to the Crown Court either for trial or for sentence. Committals for trial are either of indictable offences or of "either way" offences in which the defendant has elected trial or which it has been determined will be tried in the Crown Court. Committals for sentence occur when the defendant in an "either way" case has been tried summarily but the court has decided to commit him or her to the Crown Court for sentence.

62. Magistrates must as a rule sit in open court to which the public and the media are admitted. A court normally consists of three lay magistrates known as Justices of the Peace - advised on points of law and procedures by a legally qualified clerk or a qualified assistant. Magistrates are appointed by the Lord Chancellor, except in Lancashire, Greater Manchester and Merseyside where appointments are made by the Chancellor of the Duchy of Lancaster. There are just over 30,000 lay magistrates.

63. There are 90 full-time, legally qualified stipendiary magistrates who may sit alone and usually preside in courts in urban areas where the workload is heavy.

64. Cases involving people under 18 are heard in youth courts. These are specially constituted magistrates' courts which either sit apart from other courts or are held at a different time. Only limited categories of people may be present and media reports must not identify any young person appearing either as a defendant or a witness. Where a young person under 18 is charged jointly with someone of 18 or over, the case is heard in an ordinary magistrates' court or the Crown Court. If the young person is found guilty, the court may transfer to a youth court for sentence unless satisfied that it is undesirable to do so.

65. The Crown Court deals with trials of the more serious cases, the sentencing of offenders committed for sentence by magistrates' courts, and appeals from magistrates' courts. It sits at about 90 centres and is presided over by High Court judges, circuit judges and part-time recorders. All contested trials take place before a jury. Magistrates sit with a circuit judge or recorder to deal with appeals and committals for sentence.

66. Cases of serious or complex fraud may be dealt with under special procedures which bypass full committal proceedings in magistrates' courts at the discretion of the prosecution, but with a special procedure under which the accused would be able to apply to the Crown Court to be discharged on the ground that there was no case to answer. The procedure also applies to certain cases involving children.

67. A person convicted by a magistrates' court may appeal to the Crown Court against the sentence imposed if he has pleaded guilty, or against the conviction or sentence imposed if he has not pleaded guilty. Where the appeal is on a point of law or jurisdiction, either the prosecutor or the defendant may appeal from the magistrates' court to the High Court. Appeals from the Crown Court, either against conviction or against sentence, are made to the Court of Appeal (Criminal Division). The House of Lords is the final appeal court for all cases, from either the High Court or the Court of Appeal. Before a case can go to the Lords, the court hearing the previous appeal must certify that it involves a point of law of general public importance, and either that court or the Lords must grant leave for the appeal to be heard. The nine Lords of Appeal in Ordinary are the judges who deal with Lords appeals.

68. Where a person has been tried on indictment and acquitted (whether on the whole indictment or some counts only), the Attorney General may refer to the Court of Appeal for its opinion on any point of law which arose in the case. Before giving its opinion on the point referred, the Court must hear argument by or on behalf of the Attorney General. The person acquitted also has the right to have counsel to present argument on his behalf. Whatever the opinion expressed by the Court of Appeal, the original acquittal is unaffected. By making a reference, the Attorney General may obtain a ruling which will assist the prosecution in future cases, but he cannot ask the court to set aside the acquittal of the particular accused whose case gave rise to the reference. The point may also be referred to the House of Lords if it appears to the Court of Appeal that it ought to be considered by the Law Lords.

69. The Attorney General may also refer a case to the Court of Appeal if it appears to him that the sentence passed by the judge in the Crown Court was unduly lenient or illegal. His power applies to indictable-only offences, indecent assaults or making threats to kill, cruelty or neglect of a child and serious or complex fraud. The Court of Appeal must give leave to refer the sentence. The Court of Appeal may quash any sentence and replace it with a greater or lesser sentence which is deemed appropriate for the case, provided that this would have been within the power of the Crown Court judge who imposed the original sentence.

Scotland

70. In Scotland the High Court of Justiciary tries all serious crimes such as murder, treason and rape; the sheriff court is concerned with less serious offences and the district court with minor offences. Criminal cases are heard either under solemn procedure, when proceedings are taken on indictment and the judge sits with a jury of 15 members, or under summary procedure, when the judge sits without a jury. All cases in the High Court and the more serious ones in sheriff courts are tried by a judge and jury. Summary procedure is used in the less serious cases in the sheriff courts, and in all cases in the district courts. Maximum sentencing powers vary. A district court may impose imprisonment of up to 60 days or a maximum fine of £2,500. Sheriff courts when sitting summarily may impose imprisonment of up to three months and a maximum fine of £5,000. Stipendiary magistrates in district courts have the same powers as sheriffs sitting summarily. Sheriffs sitting with a jury may impose imprisonment of up to three years or an unlimited fine. The High Court may impose a maximum of life imprisonment and an unlimited fine. District courts are the administrative responsibility of local government authorities; the judges are lay Justices of the Peace and the local authorities may appoint up to one quarter of their elected members to be ex-officio justices. In Glasgow there are four full-time and five relief stipendiary magistrates. They are full-time salaried lawyers and have equivalent criminal jurisdiction to a sheriff sitting under summary procedure.

71. Children under 16 who have committed an offence or offences or are for any other reasons specified in statute considered to need compulsory measures of care or protection would normally be brought before a children's hearing. The hearing comprises three members drawn from a panel of 1,800 volunteers who have been appointed by the Secretary of State following successful completion of induction training. Both sexes must be represented at each hearing. If the grounds for referral to a hearing are not accepted, then a sheriff must decide whether the grounds are established. Following a hearing, the child or parents may appeal against any decision, but must do so within 21 days. This appeal is also brought before a sheriff. A small number of children who have committed serious crimes may still be dealt with in the adult criminal justice system.

72. Scotland's six sheriffdoms are further divided into sheriff court districts, each of which has one or more sheriffs, who are the judges of the court. The Court of Criminal Appeal, Scotland's supreme criminal court, is both a trial and an appeal court. Any of the following judges is entitled to try cases in the High Court: the Lord Justice General (the head of the court), the Lord Justice Clerk (the judge next in seniority) or one of the Lord Commissioners of Justiciary. The main seat of the court is in Edinburgh, although the High Court also tries cases in other towns.

73. All appeals are dealt with by the High Court in Edinburgh. In both solemn and summary procedure, an appeal may be brought against conviction, or sentence, or both. The Court may authorize a retrial if it sets aside a conviction. There is no further appeal to the House of Lords. In summary proceedings the prosecutor may appeal on a point of law against acquittal or sentence. The Lord Advocate may seek the opinion of the High Court on a point

of law which has arisen in a case where a person tried on indictment is acquitted. The acquittal in the original case is not affected.

Northern Ireland

74. The structure of Northern Ireland courts is broadly similar to that in England and Wales. The day-to-day work of dealing summarily with minor cases is carried out by magistrates' courts presided over by a full-time, legally qualified resident magistrate. Young offenders under 17 and young people under 17 who need care, protection and control are dealt with by juvenile courts consisting of the resident magistrate and two lay members (at least one of whom must be a woman) specially qualified to deal with juveniles. Appeals from magistrates' courts are heard by the county court.

75. The Crown Court deals with criminal trials on indictment. It is served by High Court and county court judges. Proceedings are heard before a single judge, and all contested cases, other than those involving offences specified under emergency legislation, take place before a jury.

76. The hearing of cases arising under emergency legislation by a judge sitting without a jury ("Diplock courts") became necessary because jurors were being intimidated. The court must observe all the principles attached to criminal trials - the calling and cross-examining of witnesses, the onus on the prosecution to prove guilt beyond all reasonable doubt, the right of the accused to take legal advice and be represented. If there is a conviction the judge must provide a written judgement outlining the reasons for it, and there is an automatic right of appeal both on points of law and fact to an appeal court which comprises three judges.

77. Appeals from the Crown Court against conviction or sentence are heard by the Northern Ireland Court of Appeal. Procedures for a further appeal to the House of Lords are similar to those in England and Wales.

Criminal proceedings

Trial

78. Criminal trials in the United Kingdom take the form of a contest between the prosecution and the defence. Since the law presumes the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant (in Scotland, called an accused) has the right to employ a legal adviser and may be granted legal aid from public funds. If remanded in custody, the person may be visited by a legal adviser to ensure a properly prepared defence.

79. In England, Wales and Northern Ireland during the preparation of the case, the prosecution, with the exception of minor charges, is required either automatically or on request to disclose to the defence all evidence against the accused on which the prosecution propose to rely. In addition, the prosecution must disclose any other material which is relevant to the issues in the case. The Criminal Procedure and Investigations Act 1996 reformed the rules on disclosure of unused material. When in force, the prosecution will be required to disclose material which might undermine the prosecution's case

(primary disclosure) or assist the defence's cases (secondary disclosure). Secondary disclosure will be dependent on the delivery of a written statement of the defence case (compulsory in the Crown Court but voluntary in the magistrates' court). Failure to serve a statement may entitle a court to draw an inference against the accused if it is reasonable to do so. The present and future law permits certain unused material to be withheld from the defence and the jury if a court rules that there is a stronger public interest in preserving confidentiality (and disclosure is not necessary for a fair trial). There is no legal requirement in Scotland for the Crown to disclose information to the defence but the latter are provided with a list of prosecution witnesses and productions in advance of the trial. There is also a general duty on Procurators Fiscal to act fairly towards the defence, to disclose to them any information which supports the defence and to furnish assistance to the defence to enable them to contact witnesses.

80. The defence or prosecution may suggest that the defendant's mental state renders him or her unfit to be tried. If the jury (or, in Scotland, the judge) decides that this is so, the defendant is admitted to a specified hospital.

81. Criminal trials are normally in open court and rules of evidence (concerned with the proof of facts) are rigorously applied. If evidence is improperly admitted, a conviction can be quashed on appeal. During the trial the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through a lawyer; to call his or her own witnesses who, if they will not attend voluntarily, may be legally compelled to attend; and to address the court in person or through a lawyer, the defence having the right to the last speech at the trial. The defendant cannot be questioned without consenting to be sworn as a witness in his or her own defence. When he or she does testify, cross-examination about character or other conduct may be made only in exceptional circumstances; generally the prosecution may not introduce such evidence.

82. In England, Wales and Northern Ireland the Criminal Justice Act 1987 provides that in serious or complex fraud cases there should be a preparatory open Crown Court hearing at which the judge will be able to hear and settle points of law and to define the issues to be put to the jury.

Jury

83. In jury trials the judge decides questions of law, sums up the evidence for the jury and instructs it on the relevant law, and discharges the accused or passes sentence. Only the jury decides whether the defendant is guilty or not guilty. In England, Wales and Northern Ireland, if the jury cannot reach a unanimous verdict, the judge may direct it to bring in a majority verdict provided that, in the normal jury of 12 people, there are not more than 2 dissentients. In Scotland, where the jury consists of 15 people, the verdict may be reached by a simple majority, but no person may be convicted without corroborated evidence. If the jury returns a verdict of "not guilty", (or, in Scotland "not proven", which is an alternative verdict of acquittal), the prosecution has no right of appeal and the defendant cannot be tried again for the same offence. In the event of a "guilty" verdict, the defendant has a right of appeal to the appropriate court.

84. A jury is completely independent of the judiciary. Any attempt to interfere with a jury once it is sworn in is punishable under the Contempt of Court Act 1981.

85. The prosecution and defence have a right to challenge potential jurors by giving reasons where they believe an individual juror is likely to be biased. There is no automatic right of challenge. The Criminal Justice (Scotland) Act 1995 abolished the right of peremptory challenge in Scotland.

86. People between the ages of 18 and 70 whose names appear on the electoral register, with certain exceptions, are liable for jury service and their names are chosen at random. People between the ages of 65 and 70 may be excused as of right. Ineligible persons include the judiciary, priests, people who have within the previous 10 years been members of the legal profession, members of the Lord Chancellor's Department or the police, prison and probation services, and certain sufferers from mental illness. Persons disqualified from jury service include those who have, within the previous 10 years, served any part of a sentence of imprisonment, youth custody or detention, or been subject to a community service order, or, within the previous five years, been placed on probation. Anyone who has been sentenced to five or more years' imprisonment is disqualified for life.

The investigation of deaths

87. In England, Wales and Northern Ireland, coroners investigate violent and unnatural deaths or sudden deaths where the cause is unknown. Deaths may be reported to the local coroner (who is either medically or legally qualified, or both) by doctors, the police, the registrar, public authorities or members of the public. If the death is sudden and the cause unknown, the coroner need not hold an inquest if, after a post-mortem examination has been made, he or she is satisfied that the death was due to natural causes. Where there is reason to believe that the deceased died a violent or unnatural death, or died in prison or in other specified circumstances, the coroner must hold an inquest, and it is the duty of the coroner's court to establish how, when and where the deceased died. A coroner may sit alone or, in certain circumstances, with a jury. Neither the coroner nor the coroner's jury may express any opinion on questions of criminal and civil liability, which fall to other courts to determine.

88. In Scotland the local procurator fiscal inquires into all sudden and suspicious deaths, and may report the findings to the Crown Office. In a minority of cases a fatal accident inquiry may be held before the sheriff. For certain categories (such as deaths in custody) a fatal accident inquiry is mandatory. In addition, the Lord Advocate has discretion to instruct an inquiry in the public interest in cases where the circumstances give rise to public concern.

The civil law

89. The main subdivisions of the civil law of England, Wales and Northern Ireland are: family law, the law of property, the law of contract and the law of torts (covering injuries suffered by one person at the hands of another irrespective of any contact between them and including concepts such

as negligence, defamation and trespass). Other branches of the civil law include constitutional and administrative law (particularly concerned with the use of executive power), industrial, maritime and ecclesiastical law. Scottish civil law has its own, largely comparable, branches.

90. In March 1994 the Lord Chancellor invited Lord Woolf to conduct an inquiry into civil justice. The aims of the review were to improve access to justice by reducing the cost of litigation, reducing the complexity of court rules, modernizing terminology and removing unnecessary distinctions of practice and procedure. Lord Woolf's final report was published in July 1996. The Lord Chancellor published his plans for implementation of the recommendations in October 1996.

The civil courts

England and Wales

91. The magistrates' courts have a limited civil jurisdiction. This includes certain family law proceedings, nuisances under the public health legislation, the recovery of local tax relating to property and income tax where the amount payable exceeds £2,000 and central taxes. Committees of magistrates license public houses, betting shops and clubs.

92. The jurisdiction of the 274 county courts covers actions founded upon contract and tort (with minor exceptions), trust and mortgage cases and actions for the recovery of land. Cases involving claims exceeding set limits may be tried in the county court by consent of the parties or, in certain circumstances, on transfer from the High Court.

93. Other matters dealt with by the county courts include hire purchase, the Rent Acts, disputes between landlord and tenant, and adoption cases. Divorce cases are determined in those courts designated as divorce county courts, and outside London, bankruptcies are dealt with in certain county courts. The courts also deal with complaints of race and sex discrimination. Where small claims are concerned (especially those involving consumers), there are special arbitration facilities and simplified procedures.

94. All judges of the Supreme Court (comprising the Court of Appeal, the Crown Court and the High Court) and all circuit judges and recorders have power to sit in the county courts, but each court has one or more circuit judges assigned to it by the Lord Chancellor and the regular sittings of the court are mostly taken by them. The judge normally sits alone, although on request the court may, exceptionally, order a trial with a jury.

95. The High Court of Justice is divided into the Chancery Division, the Queen's Bench Division and the Family Division. Its jurisdiction is both original and appellate and covers civil and some criminal cases. In general, particular types of work are assigned to a particular division. The Family Division, for instance, is concerned with all jurisdiction affecting the family, including that relating to adoption and guardianship. The Chancery Division deals with the interpretation of wills and the administration of estates. Maritime and commercial law are the responsibility of admiralty and commercial courts of the Queen's Bench Division.

96. Each of the 80 or so judges of the High Court is attached to one division on appointment but may be transferred to any other division while in office. Outside London (where the High Court sits at the Royal Courts of Justice) sittings are held at 29 High Court trial centres. For the hearing of cases at first instance, High Court judges sit alone. Appeals in civil matters from lower courts are heard by courts of two (or sometimes three) judges, or by single judges of the appropriate division, nominated by the Lord Chancellor.

97. In England and Wales, appeals in matrimonial, adoption and guardianship proceedings heard by magistrates' courts go to a divisional court of the Family Division of the High Court. Appeals from decisions of the licensing committees of magistrates are heard by the Crown Court. Appeals from the High Court and county courts are heard in the Court of Appeal (Civil Division), consisting of the Master of the Rolls and 35 Lords Justice of Appeal, and may go on to the House of Lords, the final court of appeal in civil and criminal cases.

98. The judges in the House of Lords are the 11 Lords of Appeal in Ordinary, who must have a quorum of 3, but usually sit as a group of 5, and sometimes even of 7. By tradition, lay peers do not attend the hearing of appeals (which normally take place in a committee room and not in the legislative chamber), but peers who hold or have held high judicial office may also sit. The President of the House in its judicial capacity is the Lord Chancellor.

Scotland

99. The main civil courts are the sheriff courts and the Court of Session. The civil jurisdiction of the sheriff court extends to most kinds of action and is normally unlimited by the scale of the case, the sheriff having a jurisdiction in virtually all matters of civil law and all types of procedure with the exception of certain statutory appeals and applications to the nobile officium of the Court of Session. Much of the work is done by the sheriff, against whose decision an appeal may be made to the sheriff-principal or directly to the Court of Session. The sheriff also hears a number of statutory appeals and applications such as appeals from the decisions of Licensing Boards. These are of an administrative nature and are dealt with by a truncated procedure known as the summary application.

100. The Court of Session sits only in Edinburgh, and in general has jurisdiction to deal with all kinds of action. The main exception is an action exclusive to the sheriff court, where the value claimed is less than a set amount. It is divided into two parts: the Outer House, a court of first instance, and the Inner House, mainly an appeal court. The Inner House is divided into two divisions of equal status, each consisting of four judges - the first division being presided over by the Lord President, and the second division by the Lord Justice Clerk. Appeals to the Inner House may be made from the Outer House and from the sheriff court. From the Inner House an appeal may go to the House of Lords. The judges of the Court of Session are the same as those of the High Court of Justiciary. The Lord President of the Court of Session holds the office of Lord Justice General in the High Court of Justiciary. The Court of Session has a number of special procedures for particular types of action notably commercial cases and actions for damages

for personal injuries and death. It is also devising a new general procedure for first instance cases in the Outer House. It has exclusive jurisdiction in certain international cases, notably under international conventions dealing with child abduction and custody. Some of the judges of the Court of Session sit in other capacities such as in relation to electoral appeals, appeals from tribunals and other bodies, and the Employment Appeal Tribunal.

101. The Scottish Land Court is a special court which deals exclusively with matters concerning agriculture. Its chairman has the status and tenure of a judge of the Court of Session and its other members are lay specialists in agriculture.

Northern Ireland

102. Minor civil cases in Northern Ireland are dealt with in county courts, though magistrates' courts also deal with certain classes of civil case. The superior civil law court is the High Court of Justice from which an appeal may be made to the Court of Appeal. These two courts, together with the Crown Court, comprise the Supreme Court of Judicature of Northern Ireland and their practice and procedure are similar to those in England and Wales. The House of Lords is the final civil appeal court.

Civil proceedings

England and Wales

103. In England and Wales civil proceedings are instituted by the aggrieved person; no preliminary inquiry on the authenticity of the grievance is required. Actions in the High Court are usually begun by a writ of summons served on the defendant by the plaintiff, stating the nature of the claim. A defendant intending to contest the claim informs the court. Documents setting out the precise question in dispute (the pleadings) are then delivered to the court. County court proceedings are initiated by a summons served on the defendant by the court; subsequent procedure is simpler than in the High Court.

104. A decree of divorce must be pronounced in open court but a procedure for most undefended cases dispenses with the need to give evidence in court and permits written evidence to be considered by the registrar.

105. Civil proceedings, as a private matter, can usually be abandoned or ended by compromise at any time. Actions brought to court are usually tried without a jury, except in defamation, false imprisonment or malicious prosecution cases, when either party may, except in certain special circumstances, insist on trial by jury, or a fraud case, when the defendant may claim this right. The jury decides questions of fact and damages awarded to the injured party; majority verdicts may be accepted.

106. An action in a magistrates' court is begun by a complaint on which the court may serve the defendant with a summons. This contains details of the complaint and the date on which it will be heard. Parties and witnesses give their evidence at the court hearing. Family proceedings are normally heard by not more than three lay justices including, where practicable, a woman;

members of the public are not allowed to be present. The court may order provision for custody, access and supervision of children, as well as maintenance payments for spouses and children.

107. Judgements in civil cases are enforceable through the authority of the court. Most are for sums of money and may be enforced, in cases of default, by seizure of the debtor's goods or by a court order requiring an employer to make periodic payments to the court by deduction from the debtor's wages. Other judgements can take the form of an injunction restraining someone from performing an illegal act. Refusal to obey a judgement may result in imprisonment for contempt of court. Arrest under an order of committal may be effected only on a warrant. Normally the court orders the costs of an action to be paid by the party losing it.

Scotland

108. In Scotland proceedings in the Court of Session or ordinary actions in the sheriff court are initiated by serving the defender with a summons (an initial writ in the sheriff court). In Court of Session actions the next step is the publication of the action in the court lists. A defender who intends to contest the action must inform the court; if he or she does not appear, the court grants a decree in absence in favour of the pursuer. Under new procedures for ordinary actions in the sheriff court brought into effect on 1 January 1994, the first 12 weeks of the action are closely timetabled and lead to an options hearing at which the court inquires of the readiness of the parties to proceed to debate or proof. The case is initiated by initial writ, and the defender has to lodge a notice of intention to defend and thereafter submit defences. A period of adjustment of approximately eight weeks follows before the options hearing. In family actions the parties attend the options hearing, and the court can send the cases for mediation. After the options hearing the cases go to debate on legal issues or proof. An additional procedure allowing an additional eight weeks for adjustment of pleadings is available but rarely followed.

109. In summary causes (involving small sums) in the sheriff court the procedure is less formal. The statement of claim is incorporated in the summons. The procedure is designed to enable most actions to be carried through without the parties involved having to appear in court. Normally they (or their representative) need appear only when an action is defended. These summary causes, which at present are for actions of value from £750 to £1,500, proceed on a fixed timetable and involve minimum written pleading. They cover certain classes of payment action and actions for repossession of heritable property (that is to say, repossessions of leased property which is the subject of a heritable security).

110. A small claims procedure was introduced into Scotland in 1988. This procedure, which is a variant of summary cause, provides for all cases of up to £750 to be initiated in a form similar to that available for summary cause. Where the pursuer in the action does not have legal representation, the court will assist in completing and serving the summons. Although similar to summary cause, the procedure in small claims is designed to be very informal, and the court is encouraged to adopt less strict rules of procedure and evidence at proof. At present there is a preliminary hearing in every small

claim (value up to £750 at the moment), but this is subject to review. Legal aid is not available for small claims, and the expenses are strictly limited.

Northern Ireland

111. Proceedings in Northern Ireland are similar to those in England and Wales. County court proceedings are commenced by a civil bill served on the defendant; there are no pleadings in the county court. Judgements of civil courts are enforceable through a centralized procedure administered by the Enforcement of Judgments Office.

Restrictive Practices Court

112. The Restrictive Practices Court is a specialized United Kingdom court which deals with monopolies and restrictive trade practices. It comprises five judges and up to ten other people with expertise in industry, commerce or public life.

Administrative tribunals

113. Administrative tribunals exercise judicial functions separate from the courts. Generally, they are set up under statutory powers which govern their constitution, functions and procedure. Compared with the courts, they tend to be more accessible, less formal and less expensive. They also have expert knowledge in their particular jurisdictions.

114. The expansion of the tribunal system in the United Kingdom is comparatively recent, most tribunals having been set up since 1945. Tribunals rule on certain rights and obligations of private citizens towards one another or towards a government department or other public authority. A number of important tribunals decide disputes between private citizens - for example, industrial tribunals have a major part to play in employment disputes. Some (such as those concerned with social security) resolve claims by private citizens against public authorities. A further group (including tax tribunals) decide disputed claims by public authorities against private citizens, while others decide issues and disputes which do not directly affect financial rights or liabilities such as the right to enter the United Kingdom. Although the administrative support for tribunals is generally provided by government departments, decisions in individual cases are independent, made by the tribunal applying the law to the facts of the particular case.

115. Tribunal members are normally appointed by the minister concerned with the subject, but other authorities have the power of appointment in some cases. For example, the Lord Chancellor (and, in Scotland, the Lord President of the Court of Session) makes most appointments where a lawyer chairman or member is required.

116. In many tribunal jurisdictions, a two-tier system operates with an initial right of appeal to a lower tribunal and a final right of appeal, usually on a point of law, to a higher tribunal. Appeals on a point of law only from some of the higher tribunals may be made to the High Court or Court of Appeal in England and Wales, to the Court of Session in Scotland and to the Court of Appeal in Northern Ireland.

117. The Council on Tribunals (an independent body established in 1958) exercises general supervision over most tribunals, advising on draft legislation and rules of procedure, monitoring their activities and reporting on particular matters. A Scottish Committee of the Council exercises the same function in Scotland. The Council has a similar responsibility with regard to public inquiries.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

118. Under the Constitution of the United Kingdom the possession of rights and freedoms is an inherent part of being a member of our society. They can only be restricted by a democratic decision of Parliament. The role of Parliament, therefore, is not to confer rights but to consider whether they need to be restricted, balancing the needs of society against those of the individual. The following paragraphs set out the mechanisms and legal safeguards through which human rights in the United Kingdom are protected.

B. Remedies, compensation and rehabilitation

Legal aid

119. A person in need of legal advice or legal representation in court may qualify for help with the costs out of public funds, either free or with a contribution according to his or her means. Ministerial responsibility for legal aid rests with the Lord Chancellor and, in Scotland, the Secretary of State for Scotland. Civil legal aid schemes are administered by the Legal Aid Board, the Law Society of Northern Ireland and the Scottish Legal Aid Board.

120. People whose income and savings are within certain limits are entitled to help from a solicitor on any legal matter as it affects the applicant's particular circumstances. Such help includes advice on the relevant law, writing letters on the client's behalf, and taking the opinion of a barrister or advocate. It may be extended to cover representation in civil proceedings in the magistrates' and sheriff courts and Mental Health Review Tribunal hearings. The scheme provides for initial work to be done up to a specified cost limit.

121. Legal aid, which covers representation before the court, is available for most civil proceedings to those who satisfy the financial eligibility conditions and whose cases meet the merits test. An applicant for legal aid must show not only that he or she has reasonable grounds for taking or defending proceedings but also that it is reasonable in all the circumstances of the case that he or she should receive, or continue to receive, legal aid. If legal aid is granted the case is conducted in the normal way except that no money passes between the client and the solicitor; all payments are made through the legal aid fund. Legal aid may be granted in full or subject to financial contribution by the client.

122. In limited circumstances the successful unassisted opponent of a legally aided party may recover his or her costs in the case from the legal aid fund or from the assisted person. Where the assisted person recovers or preserves

money or property in the proceedings, the legal aid fund may have a first charge on that money or property to recover the sums it has expended on the assisted person's behalf.

123. In criminal proceedings in England and Wales a legal aid order may be made by the court concerned if it appears to be in the interests of justice and if a defendant qualifies for financial help. An order must be made (subject to means) when a person is committed for trial on a murder charge or where the prosecutor appeals or applies for leave to appeal from the Court of Appeal (Criminal Division) to the House of Lords.

124. Under the Police and Criminal Evidence Act 1984 in England and Wales the Legal Aid Board makes arrangements for duty solicitors to be available to magistrates' courts to provide initial advice and representation to unrepresented defendants, and also for duty solicitors to be available, on a 24-hour basis, to give advice and assistance to suspects at police stations. The services of a duty solicitor are free.

125. The arrangements for aid in criminal proceedings in Northern Ireland are broadly similar to those in England and Wales. In Scotland there is a duty solicitor scheme for accused people in custody in sheriff and district court cases. The "interests of justice" test applies in all summary criminal cases. Only a "hardship" test applies in solemn cases. Decisions on applications for legal aid in summary cases are taken by the Scottish Legal Aid Board and in solemn cases by the court. Legal aid for criminal cases in Scotland and Northern Ireland is free.

126. In a number of urban areas, law centres provide free legal advice and representation. These law centres, which are financed from various sources, often including local government authorities, usually employ full-time salaried lawyers; many also have community workers. Much of their time is devoted to housing, employment, social security and immigration problems. Free advice is also available in Citizens Advice Bureaux, consumer and housing advice centres and in specialist advice centres run by various voluntary organizations. The Refugee Legal Centre and the Immigration Advisory Service, both of which receive government funding, provide free advice and assistance to asylum seekers, with the Immigration Advisory Service also providing free advice and assistance to persons with immigration rights of appeal.

Compensation for wrongful conviction or detention

127. In October 1988 the United Kingdom introduced legislation to incorporate, on a statutory basis, the provisions of article 14 (6) of the International Covenant on Civil and Political Rights. Under the provisions of Section 133 of the Criminal Justice Act 1988 a person convicted of a criminal offence which has been quashed by the Court of Appeal (1) upon application made outside the normal time limits or (2) following actions by the Secretary of State to use his powers of intervention to refer a conviction to the Court of Appeal or (3) in respect of which a pardon has been granted by exercise of the Royal Prerogative of Mercy, has the right to apply to the Secretary of State for payment of compensation. If the person concerned has died, his or her personal representative may submit an application to the Secretary of State.

128. Under the 1988 Act, the final decision on whether compensation should be paid rests with the Secretary of State, who will consider whether the decision of the Court of Appeal to quash the conviction or the grant of a pardon was due to a new or newly discovered fact showing beyond reasonable doubt that there was a miscarriage of justice. This criterion is less restrictive than that specified in article 14 (6) of the International Covenant, which requires the newly discovered fact to show conclusively that there has been a miscarriage of justice. The Secretary of State will, in reaching a decision on whether compensation is payable, also take into account whether the non-disclosure of the new fact was wholly or partly attributable to the person applying for compensation.

129. The Criminal Appeal Act 1995 provides for the establishment of the Criminal Cases Review Commission as a body independent of the executive to provide a mechanism whereby alleged miscarriages of justice can be reviewed by the courts. The Commission will become operative in early 1997, and at that time the Home Secretary's powers to refer cases will be abolished. The Commission will investigate and consider cases of alleged wrongful conviction and refer appropriate cases to the Court of Appeal.

130. Section 133 of the Criminal Justice Act 1988 does not provide for compensation in cases where a person has been detained in custody charged with an offence which has subsequently not been pursued, or where there has been an acquittal at the court of trial or on an appeal made within the normal time limits allowed for an appeal. In such circumstances, and provided that a person has been detained in custody, the Secretary of State may upon application to him authorize an ex gratia payment of compensation.

131. Ex gratia payment of the compensation will only be considered where the detention of the applicant has resulted from serious default on the part of a member of the police or some other public authority, or in other exceptional circumstances, for example where facts emerge at trial which completely exonerate the accused. Applications for compensation will not be considered simply because, at trial or on appeal, the prosecution was unable to sustain the burden of proof beyond a reasonable doubt in relation to the charge brought.

132. If the Secretary of State considers that payment of compensation is justified under section 133 of the Criminal Justice Act 1988, the amount is determined under that legislation by an independent assessor. The Secretary of State has also agreed to be bound by the sum recommended by the assessor as an award in all ex gratia cases. In all successful claims the assessor will also approve the payment of any reasonable legal costs incurred by the claimant.

133. Acceptance of compensation authorized by the Secretary of State does not require the claimant to sign any undertaking which restricts that person's right to take other forms of action.

134. Persons detained in custody for other reasons without lawful authority, for example through an error in the calculation of a sentence imposed by a court or a failure to act promptly upon a court direction to release a person

on bail, may also apply to the Secretary of State for an ex gratia payment of compensation. They may also take legal action to recover damages.

Victims of crime

135. The courts may order an offender, on conviction, to pay compensation to the victim for personal injury, loss or damage resulting from an offence. In England and Wales the courts are obliged to consider compensation in every appropriate case and to give reasons where no compensation is awarded. Compensation for a victim must come ahead of a fine if the court is considering both, and the recovery of amounts awarded in compensation must be put ahead of recovery of fines.

136. Where the Crown Prosecution Service declines to prosecute, victims may prosecute privately, but in practice seldom do so. Victims may also sue for damages in the civil courts. Court procedure has been simplified so that persons without legal knowledge can bring small claims for loss or damage.

137. Victims of any nationality who suffer injury as a result of violent crime in England, Wales or Scotland may apply for compensation from public funds under the Criminal Injuries Compensation Scheme. Compensation is based on a tariff of awards, and payments range from £1,000 to £500,000 for the most seriously injured victim.

138. Separate arrangements exist in Northern Ireland, where compensation can in certain circumstances be paid from public funds for criminal injuries, and for malicious damage to property, including the resulting loss of profits.

139. Other practical help is given to victims of crime. There are 365 victim support schemes covering the whole of England and Wales, with over 12,000 trained volunteers. They may visit, telephone or write to victims with information and to offer practical advice and emotional support. There are also witness support schemes at all 77 Crown Court centres in England and Wales. All these schemes are supported by a government grant approaching £12 million annually which is channelled through the national charity, Victim Support. Broadly similar arrangements apply in Scotland and Northern Ireland.

140. In June 1996 the Government published a new Victim's Charter. This sets out the standards that victims of crime should expect of the criminal justice agencies and tells them how to complain if they do not get them. All victims of reported crime are given a "Victims of crime" leaflet which gives practical advice about what to do in the aftermath of a crime. It explains simply the police and court processes, how to apply for compensation and what further help is available.

C. Constitutional protection of human rights

141. The United Kingdom does not have a bill of rights or written constitution. The system of parliamentary government in the United Kingdom is the result of a gradual evolution spanning several centuries. Under the United Kingdom's constitutional arrangements the possession of rights and freedoms is an inherent part of being a member of our society. Rights,

therefore, are not conferred by the Government; they already exist unless Parliament decides that the needs of society are such that they should be restricted in some specific way.

D. Incorporation of human rights instruments into national legislation

142. Treaties and conventions are not incorporated directly into domestic law, as happens in some countries. Instead, if any change in the law is needed to enable the United Kingdom to comply with a treaty or convention, the Government introduces a bill designed to give effect to the relevant articles of the treaty or convention. The bill is subject to the normal parliamentary procedures.

E. Enforcement by courts of human rights instruments

143. Courts in the United Kingdom interpret only those laws made by Parliament and those parts of European Community law which have direct effect within member States.

F. National machinery for implementation of human rights

144. Human rights are safeguarded in the United Kingdom through the work of a number of specialized bodies established by statute. Chief of these are:

(a) The Equal Opportunities Commissions, established under the Sex Discrimination Act 1975 and the Sex Discrimination (Northern Ireland) Order 1976;

(b) The Commission for Racial Equality, established under the Race Relations Act 1976;

(c) The Office of the Parliamentary Commissioner for Administration (PCA), often referred to as "the Ombudsman", established under the Parliamentary Commissioner Act 1967;

(d) The Office of the Data Protection Registrar, established under the Data Protection Act 1984;

(e) The Police Complaints Authority, established under the Police and Criminal Evidence Act 1984, and the Independent Commission for Police Complaints for Northern Ireland, established under the Police (Northern Ireland) Order 1987.

145. Additionally, the following bodies have been established in Northern Ireland, in recognition of the special circumstances there:

(a) The Independent Assessor of Military Complaints Procedures, established under the Northern Ireland (Emergency Provisions) Act 1991;

(b) The Standing Advisory Commission on Human Rights, established under the Northern Ireland Constitution Act 1973.

Equal opportunities

146. Under the Sex Discrimination Act 1975, which applies in England, Wales and Scotland, it is unlawful to treat one person less favourably than another on grounds of sex in employment (including training), education and the provision to the public of housing, goods, facilities and services. The Act also provides protection against discrimination on grounds of being married and also affords special treatment to women in connection with pregnancy or childbirth. Advertisements indicating an intention unlawfully to discriminate were also made illegal. In order to comply with a European Community equal treatment directive, the Act was amended in 1986 to remove exemptions enjoyed by firms employing five or fewer people, to give women the legal right to continue working until the same age as men in those occupations with different retirement ages for men and women, and to remove restrictions on shift and night working by women. The Equal Pay Act 1970 (as amended) gives women the right to equal pay for men when doing work that is the same or broadly similar, work judged equal by a job evaluation scheme and, since 1984, work of equal value. Both acts apply to discrimination against either sex. Similar legislation has been passed in Northern Ireland. The Equal Pay and Sex Discrimination (Miscellaneous Amendments) Regulations 1996 gave industrial tribunals some additional powers: for example, they are able to award compensation in indirect sex discrimination cases.

147. People who believe that they have been the subject of discrimination have the right to complain to an industrial tribunal in respect of discrimination in employment, or otherwise to a civil court of law. Compensation or damages, a declaration of rights or an order to carry out, or refrain from, specified acts are available as remedies. There is a right of appeal against a court or tribunal decision.

148. The Equal Opportunities Commission established by the 1975 Act helps to enforce the legislation in England, Wales and Scotland, provides advice and assistance to those who believe they have suffered discrimination, promotes equality of opportunity between men and women, and keeps under review the working of the legislation. The Commission has a code of practice regarding discrimination in employment.

149. The Sex Discrimination (Northern Ireland) Order 1976 makes it unlawful to discriminate on grounds of sex or marriage in employment or in the provision of goods, facilities and services.

150. Under European Community legislation member States are obliged to eliminate discrimination in statutory social security schemes providing protection against sickness, unemployment, invalidity, old age, accidents at work or occupational diseases. There are, however, exclusions such as the determination of pensionable age. The United Kingdom has taken steps to implement this Community legislation in its social security system.

Race relations

151. The promotion of equal opportunity in a multiracial society in which all people have the same rights and responsibilities is the central objective of the Government's race relations policy. It has been the policy of successive

British Governments that members of the ethnic minorities living in Britain should have the same opportunities to contribute to and benefit from society, whatever their ethnic origins.

152. Under the Race Relations Act 1976, which strengthened and superseded previous legislation in England, Scotland and Wales, it is unlawful to treat one person less favourably on grounds of colour, race, nationality (including citizenship) or ethnic or national origins; this applies to employment (including training), education and the provision to the public of housing, goods, facilities and services, and premises. Advertisements indicating an intention to discriminate are, with few exceptions, also unlawful. The procedure relating to the hearing of complaints against racial discrimination is the same as that for complaints concerning sex discrimination; individuals have the right of direct access to the civil courts and industrial tribunals.

153. The Commission for Racial Equality was established by the 1976 Act to work towards the elimination of discrimination, to promote equality of opportunity and good race relations, and to keep under review the working of the Act. The Commission provides information and advice to the public about the Act and has discretion to assist individuals who consider that they have been the subject of unlawful discrimination. It has drawn up a code of practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment which gives practical guidance to employers, trade unions and others on the provisions of the Act; the code was approved by Parliament and became operative in April 1984. The Commission also makes grants for projects undertaken locally by over 88 Race Equality Councils as well as other bodies. The Race Relations Act does not apply to Northern Ireland, where different anti-discrimination legislation applies to suit the local circumstances.

154. A draft proposal for a Race Relations (Northern Ireland) Order was published in July 1996, and it is intended that the legislation will come into operation from April 1997. The legislation will follow the general lines of the Race Relations Act 1976, with some amendments tailored to suit Northern Ireland. The Order will also establish a Commission for Racial Equality for Northern Ireland.

155. The law regarding incitement to racial hatred has been strengthened by the Public Order Act 1986 which came into force in April 1987. A person using threatening, abusive or insulting words or behaviour or displaying, publishing or distributing such material is guilty of an offence; this applies both where racial hatred is likely to be stirred up and where the person concerned intends to stir it up. The Act also extends the law to cover broadcasting (except by the British Broadcasting Corporation and the Independent Television Commission) and cable and other media which involve recordings of visual images or sounds. It is also an offence to possess racially inflammatory material, and the Government took steps in the Criminal Justice Act 1994 to increase the police powers of entry, search and seizure for the publication and distribution of such material.

The Parliamentary Commissioner for Administration

156. The Parliamentary Commissioner Act 1967 established the office of the Parliamentary Commissioner for Administration (PCA) - often referred to as the "Ombudsman" - to investigate complaints by members of the public who claim to have sustained injustice as a result of maladministration.

157. The Commissioner can investigate actions taken "in the exercise of administrative functions" by or on behalf of the departments of central Government. A wide range of bodies, such as the Equal Opportunities Commission, the Commission for Race Relations, the Legal Aid Board, and bodies regulating privatized industries, fall within its jurisdiction. Complaints are referred to the PCA by members of Parliament. The PCA is independent of Government, and reports to a committee of the House of Commons. Reports are published.

158. A number of other "Ombudsmen" have also been established, for local government, for the National Health Service and the Legal Services Ombudsman.

Data protection

159. The growing power of computers to collect and redistribute information about individuals has been a matter of concern since the early 1970s. The Data Protection Act 1984, which applies throughout the United Kingdom, provides safeguards for the handling of personal data on computer, and has enabled the United Kingdom also to ratify the 1981 European Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data.

160. The 1984 Act's Data Protection Principles require, for example, that personal data should be processed fairly and lawfully, used only for specified purposes and subject to proper security. Those who wish to process data must (with some exceptions) register with the Data Protection Registrar, who has powers to enforce compliance with the Principles.

161. Although the Act (and the parent Convention) are concerned with data protection, they are also intended to facilitate flow of the data; safeguards have been applied, thus striking a balance between the right to know and individual privacy.

162. Work is currently in hand to transpose into United Kingdom law, by 24 October 1998, the provisions of the EC Directive on data protection.

Complaints against the police

England and Wales

163. Provision for the handling of complaints against the police in England and Wales is made in part IX of the Police and Criminal Evidence Act 1984 (PACE), which established the Police Complaints Authority (PCA), and in regulations. The PCA can only supervise the investigation of events on or

after 29 April 1984, although their other powers (e.g. in respect of discipline) are not so limited. The Authority's functions are described below.

164. Section 84 of the Act defines "complaint" as any complaint about the conduct of a police officer which is submitted by a member of the public or on behalf of a member of the public and with his or her written consent. The same section provides that any aspect of a complaint which relates to the direction and control of a police force by the chief officer or person performing the functions of the chief officer is outside the scope of the arrangements for dealing with complaints set out in part IX of PACE.

165. Where the complaint is against a senior officer, the relevant police authority is required by section 86 of the Act to record and investigate it, although if they are satisfied that the conduct complained of, even if proved, would not justify a criminal or disciplinary charge, they may deal with it according to their discretion.

166. Where a chief officer receives a complaint against an officer of his force who is of the rank of chief superintendent or below, the chief officer is required by section 85 of the Act to record it and to arrange for it either to be resolved informally or, if it is not suitable for informal resolution, to be formally investigated

167. In certain circumstances the requirement to investigate formally or resolve informally a complaint may be dispensed with. The Police (Complaints) (General) Regulations 1985 provide for such a dispensation in any case where a complaint is withdrawn. The Police (Dispensation from Requirement to Investigate Complaints) Regulations 1985, which was amended by the Police (Dispensation from Requirement to Investigate Complaints) Regulations 1990, provides for such a dispensation in the following circumstances:

(a) Where a complaint is anonymous or repetitious;

(b) Where a complaint is vexatious, oppressive, or otherwise an abuse of the procedures for dealing with complaints; or is incapable of being investigated as defined in the Schedule to the Regulations;

(c) Where more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint, and either where there is no good reason for the delay or where injustice would be likely to be caused by the delay.

168. Section 85 of the 1984 Act provides that the first step to be taken by the chief officer after the recording of a complaint is to consider whether informal resolution might be appropriate and if so to appoint an officer of at least the rank of chief inspector to carry out the procedure. Complaints are only suitable for informal resolution if the conduct complained of, even if proved, would not justify a criminal or disciplinary charge and if the complainant is content for the complaint to be handled in this way.

169. Informal resolution is intended to provide a flexible and simple procedure for dealing with complaints of a minor nature which would otherwise

attract the full length and formality of the investigation process. The procedure is appropriate where it is clear from the outset that any alleged criminal behaviour or breach of the discipline code is one which, if proved to have occurred, would probably be dealt with not by criminal or formal disciplinary charges, but by an informal warning or by advice; or where preliminary investigation reveals that the conduct was both lawful and reasonable.

170. The procedure is governed by the Police (Complaints) (Informal Resolution) Regulations 1985. These require that the officer appointed to attempt informal resolution (the "appointed officer") should seek the views of both the complainant and the officer against whom the complaint has been made. The appointed officer's task is to achieve a position in which the complainant is satisfied that his complaint has been dealt with in an appropriate manner. This will not necessarily require an apology on behalf of either the force or the officer concerned. In some instances it suffices to explain to the complainant the law or the procedures under which the officer was operating at the time of the incident which gave rise to the complaint. In yet others there may be an irreconcilable difference in the complainant's and the officer's description of the incident, in which case it will often be sufficient for the position to be explained to the complainant and for the latter to be invited to accept that nothing further can be done. The only limit which the Regulations place on the appointed officer's freedom to approach the resolution of the complaint in the most appropriate way is the requirement that he or she should not render any apology on behalf of the officer concerned unless that officer has admitted the conduct complained of.

171. Where it appears to the chief officer, after attempts have been made to resolve a complaint informally, that informal resolution is impossible, or that the complaint is for any other reason not suitable for informal resolution, he or she must arrange for it to be formally investigated. In such cases the following applies:

(a) Mandatory referral to the PCA. Where a chief officer has decided that a complaint should be formally investigated, he will first consider whether it is necessary or desirable for reference to be made to the Police Complaints Authority for supervision of the investigation. Section 87 (1) (a) (i) of the 1984 Act requires the chief officer to refer to the Authority any complaint alleging that the conduct complained of resulted in the death of, or serious injury to, some other person. The Police (Complaints) (Mandatory Referrals, etc.) Regulations 1985 require reference to the Authority of any complaint alleging conduct which, if shown to have occurred, would constitute assault occasioning actual bodily harm; or an offence under section 1 of the Prevention of Corruption Act 1906; or a serious arrestable offence within the meaning of section 116 of the 1984 Act. Notification of the complaint must be given to the Authority within a specified time;

(b) Discretionary referral to the PCA. Section 87 (1) (b) of the 1984 Act provides that the chief officer may refer to the Authority any complaint which is not required to be referred to them. Section 87 (2) empowers the Authority to require the submission to them of any complaint not referred to them by the chief officer. Under section 88 any non-complaint matter which

indicates that an officer may have committed a criminal or disciplinary offence may be referred to the Authority if it appears to the chief officer that it ought to be referred by reason of its gravity or because of exceptional circumstances;

(c) The PCA's duty. The Police Complaints Authority is required to supervise the investigation of any complaint referred to it under section 87 (1) (a) (i) of the 1984 Act and of any other complaint (or non-complaint matter referred to it under section 88) if they consider that it is desirable in the public interest to do so. If the Authority supervises an investigation, it may choose to exercise its right, under section 89 of the Act, to approve the appointment of the investigating officer;

(d) The investigating officer. Section 85 of the 1984 Act provides that the officer appointed to conduct a formal investigation should be of at least the rank of chief inspector and of at least the rank of the officer against whom the complaint is made. Moreover, under the Police Discipline Regulations 1985 the investigating officer should be serving in a different subdivision or branch from the officer complained against. In appropriate cases the chief officer will invite an officer from another force to conduct the investigation.

172. When the investigating officer has completed the investigation, or has taken it as far as is reasonably possible, he or she will submit a report to the chief officer. If the investigation has been supervised by the Police Complaints Authority the investigating officer will instead submit the report to the Authority and send a copy to the chief officer. At the end of an investigation which it had supervised, the Authority must issue a statement (which will be sent to the chief officer, the complainant and the officer complained against) showing whether it is satisfied with the conduct of the investigation, and specifying any respect in which it is not. If it is not satisfied with the investigation, it may record its reasons for this.

173. Under section 90 (4) of the 1984 Act if a chief officer determines that an investigation report indicates that a criminal offence may have been committed by a member of that force, and if the chief officer considers that the offence indicated is such that the officer ought to be charged with it, then a copy of the report must be sent to the Director of Public Prosecutions. The Director will personally inform a complainant directly of his decision whether or not a police officer complained of should be prosecuted. The Director does not give reasons for this decision, but where the decision is against prosecution, the replies sent to the complainant and the chief officer will normally indicate whether the Director considers that the evidence is insufficient to justify criminal proceedings or that criminal proceedings are not necessarily in the public interest.

174. After any criminal aspects have been considered the chief officer is required to submit the case to the Police Complaints Authority (together with a copy of the investigation report, where the Authority has not supervised the investigation) setting out the chief officer's opinion of the complaint and giving particulars of any disciplinary charges which have been preferred or are proposed or, where disciplinary charges have not been brought, the reasons for not doing so. The chief officer is not required to submit the case to the

Authority for consideration where disciplinary charges have already been preferred and the officer concerned has admitted the charge and not withdrawn the admission.

175. Where the Police Complaints Authority consider that a disciplinary charge should be preferred against an officer in respect of a matter complained of which has not already been the subject of disciplinary charges, it will recommend to the chief officer the charge which it considers should be preferred, giving reasons for its recommendation. The chief officer will inform the Authority whether he or she accepts its recommendation and, if so, proceed to prefer the charges. Where the chief officer disagrees with the Authority's recommendation to prefer a disciplinary charge, they may enter discussions, but in the last resort, if mutual agreement cannot be reached, the Authority has the power to direct the chief officer to bring specified disciplinary charges.

176. Section 104 of the 1984 Act addresses itself to the issue of double jeopardy and provides that where a member of a police force has been convicted or acquitted of a criminal offence the officer shall not be liable to be charged with any offence against discipline which is in substance the same as the offence of which he or she has been convicted or acquitted.

Scotland

177. There is no Police Complaints Authority in Scotland. The chief constable is statutorily responsible for ensuring that complaints against his officers are investigated, but complaints involving alleged criminal conduct are referred to the procurator fiscal who is entirely independent of the police service.

178. The complaints procedure was reviewed by Her Majesty's Chief Inspector of Constabulary (HMCIC) in 1993; he concluded that the system worked well. Ministers have, however, decided that they wanted to inject a greater degree of independent scrutiny into the system and decided that HMCIC should have an enhanced role in the consideration of complaints. Provision for this was made in the Police and Magistrates' Courts Act 1994 which empowered HMCIC to require a chief constable to re-examine a complaint. The outcome is now notified to the complainant, together with any comments which HMCIC may have. These arrangements came into effect on 1 August 1996.

179. Complaints are investigated by a senior officer who has had no earlier involvement with the case. In some cases the investigating officer comes from another police force but that normally happens only in cases where there are complaints against chief officers or where very serious allegations are involved.

Northern Ireland

180. In Northern Ireland the Independent Commission for Police Complaints for Northern Ireland (ICPC) considers complaints and, subject to any adjudication of the Director of Public Prosecutions, the relevant investigation reports. The ICPC is charged with ensuring that the investigation of complaints is carried out in a thorough and impartial manner and is required to supervise

the investigation of all complaints involving death or serious injury, and can supervise the investigation of other complaints. Procedures are broadly similar to those in England and Wales

Additional safeguards for human rights in Northern Ireland

181. In recognition of the special needs of this part of the United Kingdom, the post of Independent Assessor of Military Complaints Procedures was established under the Northern Ireland (Emergency Provisions) Act 1991. The Assessor's primary role is to review army procedures for investigating non-criminal complaints against members of the armed forces in Northern Ireland. The Assessor submits an annual report to the Secretary of State which is published and laid before Parliament.

182. The Standing Advisory Commission on Human Rights (SACHR), established under the Northern Ireland (Constitution) Act 1973, is an independent body which reports annually to the Secretary of State for Northern Ireland on a wide range of matters pertaining to human rights in Northern Ireland. The report is published and laid before Parliament.

IV. INFORMATION AND PUBLICITY

183. The Government publishes, through Her Majesty's Stationery Office, the texts of United Nations human rights instruments signed by the United Kingdom. Published texts are presented to Parliament and copies are placed in the libraries of the House of Commons and House of Lords. Copies may be purchased from all good bookshops and may be borrowed from the larger lending libraries.

184. The United Kingdom's reports to the bodies established under the various United Nations human rights instruments to monitor State party compliance with treaty obligations are prepared by the Government, drawing on information and expertise from both government departments and outside sources. Copies of the reports are made available to Parliament and to interested bodies on publication, and are also available to members of the public.